

Address any reply to:

P.O. Box 35040, San Francisco, Calif. 94

Department of the Treasury

District Director

Internal Revenue Service

Date: DEC 17 1975

In reply refer to:
L-298, Code 414

SF:EO:R:SLong
(415)556-4867



Wasatch Railway Museum and Foundation
8330 Valiant Drive
Salt Lake City, Utah 84121

Gentlemen:

We have enclosed a copy of our examination report explaining why we believe an adjustment to your organization's exempt status is necessary.

If you accept our findings, you do not need to take further action. We will send you an appropriate modification or revocation letter.

If you do not accept our findings, we recommend that you request a conference with a member of our district conference staff. However, if you prefer, you may request a conference in the National office. You may have a National office conference even though you have had a district conference.

If you request a conference, please submit a written protest in duplicate, giving the facts, law, and any other information to support your position. Please indicate whether you prefer a district or National office conference. We will then contact you about an appointment.

If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the examination report. If you write us about your case, please use the above address and refer to the symbols in the upper right corner of this letter. Please see attached sheet.

Thank you for your cooperation.

Sincerely yours,

F. L. Browitt

District Director

Enclosure:
Examination Report



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In view of the short period remaining before the statute of limitations for assessment of tax expires, please be advised that if you intend to request a District conference or protest to the Appellate Division, it will be necessary to execute the enclosed Form 872 and submit it to us within 30 days of the date of this letter. Absent receipt of the executed Form 872, we will have no choice but to issue a Statutory Notice of Deficiency.



FORM 4621

(APRIL 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

REPORT OF EXAMINATION - EXEMPT ORGANIZATION

ORGANIZATION NAME AND ADDRESS (Number, Street, City or Town, State, ZIP Code)

Wasatch Railway Museum and Foundation, Inc
6330 Valiant Drive
Salt Lake City, Utah 84121

FORM NUMBER(S)

990

EMPLOYER IDENTIFICATION
NO. 237072470TAX YEARS ENDED
12/31/72AGREEMENT SECURED
(Form 990-T or 990-C)☐ YES☒ NOPERSONS WITH WHOM
FINDINGS WERE
DISCUSSED

Names and Titles

Mr. Jay R. Edwards President

INTERNAL REVENUE AGENT'S NAME

James D. Cottor

KEY DISTRICT OFFICE

San Francisco

DATE
9/2/75

RESULTS OF EXAMINATION, AND OTHER INFORMATION

See attached:

SCHEDULES AND EXHIBITS ATTACHED



The Wasatch Railway Museum and Foundation.

① The Wasatch Mountain Railway and Development Company is a private taxable corporation with 15 stockholders. Three of its five locomotives are leased from the Wasatch Railway Museum and Foundation Incorporated. It also leases eight to ten railway cars from the museum. These cars are out of a total 15 cars used by the profit-making company. The profit-making company does business as the Heber Creeper. The above information was obtained from the acting manager on August 29, 1974.

The Heber Creeper is a seasonal operation which runs from Memorial Day through the Labor Day weekend on a daily basis. In addition to this daily operation, it has a pre- and post-season of weekends only usually for the months of May and September. The run trip takes arounds three and one-half hours. The trains run from Heber City Depot to Bridal Veil Falls Depot and charges \$5 for this trip for an adult fare. Children travel for half price.

In the lease, the Wasatch Railway Museum and Foundation (lessor) agreed to enter into a lease agreement to lease the railway equipment, parts and supplies. The lease was to last for a period of time. The lessee was to have the right of way in a lease with the State of Utah. This period amounts to a 45-year lease of the property to the profit-making company.

The rent of this equipment was set at 10 percent of the net profit derived from the actual operation of the railroad and its revenue from the sale of



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train ride tickets only. Income derived from any other source will not be considered. The net profit will be calculated after all operating costs including repair and maintenance costs are deducted from gross receipts of ticket sales. The total rent in any event shall not exceed \$15,000 per year. The agreement also states that the members of the Wasatch Railway Museum and Foundation shall have first option to have any jobs that pay monetary compensation if they demonstrate equal or better ability or skill as compared to anyone else who may seek employment. The lessor further agrees to hold the lessee harmless in the use and operation of any of the equipment covered by the lease and agree not to place any liens against said equipment nor to use it as security for any loans or other transactions and will defend at its expense the right of the lessee to use said equipment. The lease agreement was entered into by the two organizations on January 29, 1971. The lease has an attached list of locomotives, railway cars, tooling machinery, and equipment, steam locomotive parts, and fittings. The most of this equipment came from the Promontory Chapter of the National Railway Historical Society Incorporated. ⁽²⁾ The amounts were transferred as a bill of sale in a document dated February 22, 1970. They were actually a contribution to the Wasatch Railway Museum and Foundation Incorporated. Since the lease agreement, the lessee has not had a profit and the Wasatch Railway Museum has not received any rent for the use of its assets.

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ORGANIZATION'S POSITION:

(3)

The organization felt this disposition of the assets was the best way to get a working railway started. The organization had no working capital and were unable to secure the necessary capital to open a museum to display the various assets donated or bought by the museum.

AGENT'S POSITION:

(4)

The organization has allowed its assets to be fully used by a profit-making corporation. The contract is for at least 25 years duration with two 10-year extensions. The organization will be without its assets for a possible 45 years and be receiving only 10 percent of the net profits of this profit-making corporation while supplying almost all its equipment.

In Article 4 of the articles of incorporation, the purposes are:

- (a) Educational and scientific purposes including but not limited to the collecting and preservation of historical data, material, and equipment, pertaining to railways of all kinds, organizing, maintaining and supporting a transportation museum, teaching the history of this country and the modes of transportation to the general public and providing information to members of this corporation and

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the general public concerning railways and other forms of transportation by means of a library and museum project.

- (b) To own, operate, manage, maintain and in every other way deal with a railway in the State of Utah, primarily for educational and historical purposes and to do everything desirable or necessary for the preservation and operation of said railway.

These above activities are the purpose the organization was founded and for which the tax exempt status under section 501(c)(3) of the Internal Revenue Code was granted. The activity of leasing the assets of a public charity to a business venture for a possible 45 years is not an activity described in the organization's articles of incorporation. The employment clause for the members in the lease is also an activity not found in the articles.

LAW AND ARGUMENT:

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

The Wasatch Railway Museum and Foundation

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the Internal Revenue Regulations states organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to children or animals must meet (a) the organizational and operational tests. In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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The operational test - the primary activities of the organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of its exempt purpose. An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (1) of the Internal Revenue Code section 1.501(c)(3)-1(d)(1)(ii) unless it serves a public interest rather than a private interest.

Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests.

(5) In Revenue Ruling 65-1, CB 1965-1, page 226, an organization is held not to be exempt when its main purpose is incidental to a commercial operation and the main benefit is to the profit-making corporation rather than for the public interest.

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CONCLUSION:

(6) Due to the leasing of all its assets to a profit-making concern, the organization is not operating for the purpose exemption was granted on June 23, 1970. It is therefore proposed to revoke your exemption from Federal income tax. If it is finally determined that you are not eligible for exemption from Federal income tax, the examination will be continued to determine your liability for any Federal taxes.

